

1 BILL NO. R-88-08- 05

2 RESOLUTION NO. R- 55-88

3 A RESOLUTION of the Common
4 Council of the City of Fort
5 Wayne, Indiana, authorizing
6 the adoption and implemen-
7 tation of an Employee
8 Deferred Compensation Plan.

9 WHEREAS, the City of Fort Wayne has considered the
10 establishment of a Deferred Compensation Plan for city
11 employees made available to the City of Fort Wayne and to its
12 employees by The Lincoln National Pension Insurance Company;
13 and

14 WHEREAS, said employees are often unable to
15 acquire retirement security under other existing and available
16 retirement plans due to the contingencies of employment
17 mobility; and

18 WHEREAS, the City receives benefits under said
19 plan by being able to assure reasonable retirement security to
20 said employees by being more able to attract competent
21 personnel to its service and by increasing its flexibility in
22 personnel management through elimination of the need for
23 continued employment for the sole purpose of allowing an
24 employee to qualify for retirement benefits.

25 NOW, THEREFORE, BE IT RESOLVED BY THE COMMON
26 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

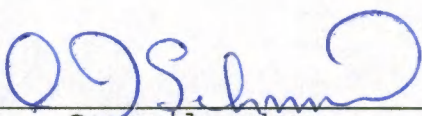
27 SECTION 1. The City of Fort Wayne, Indiana,
28 hereby establishes said Deferred Compensation Plan for said
29 employees, attached hereto as Appendix "A", and hereby
30 authorizes its Mayor and City Controller to execute all
31 documents necessary to effectuate the existence of said Plan
32 effective upon passage of this Resolution provided, however,
that no monies will be spent or paid under or pursuant to such
plan without approval of the City Council.

SECTION 2. The City Council hereby establishes a
Deferred Compensation Committee to be comprised of five
members, City Controller, Personnel Director, a Representative
of the General Employees, a Representative of Police and a

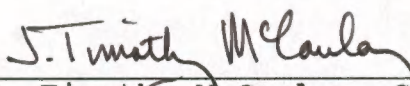
PAGE TWO

Representative of Fire. The Chairperson of this Committee is authorized to execute all Participation Agreements with said employees and other eligible Participants, which are necessary for said persons' Participation in the Plan, an example of which appears in Appendix "B".

SECTION 3. That this Resolution shall be in full force and effect from and after its passage and all necessary approval by the Mayor.


Councilmember

APPROVED AS TO FORM
AND LEGALITY


J. Timothy McCaulay, City Attorney

Read the first time in full and on motion by Schmidt, seconded by Salinas, and duly adopted, read the second time by title and referred to the Committee on Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, 19____, the _____, day of _____, at _____ o'clock _____ M., E.S.T.

DATED: 8-5-88

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Schmidt, seconded by Salinas, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>8</u>		<u>1</u>	
<u>BRADBURY</u>	<u>✓</u>			
<u>BURNS</u>	<u>✓</u>			
<u>GiaQUINTA</u>	<u>✓</u>			
<u>HENRY</u>	<u>✓</u>			
<u>LONG</u>	<u>✓</u>			
<u>REDD</u>			<u>✓</u>	
<u>SCHMIDT</u>	<u>✓</u>			
<u>STIER</u>	<u>✓</u>			
<u>TALARICO</u>	<u>✓</u>			

DATED: 8-23-88

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)

(SPECIAL) (ZONING MAP) ORDINANCE RESOLUTION NO. B-55-88

on the 23rd day of August, 1988,

Sandra E. Kennedy ATTEST
SANDRA E. KENNEDY, CITY CLERK

SEAL
Thomas P. Henry
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 24th day of August, 1988, at the hour of 1:30 o'clock P.M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 25th day of August, 1988, at the hour of 10:40 o'clock A.M., E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR

(APPENDIX A)

THE CITY OF FORT WAYNE, INDIANA

DEFERRED COMPENSATION PLAN DOCUMENT

CITY OF FORT WAYNE DEFERRED COMPENSATION PLAN

I. INTRODUCTION

In accordance with the provisions of Acts 1975, P.L. 42, SEC.1.(amended), and Acts 1980, P.L.27, SEC.1. of the State of Indiana, and as provided in Section 457 of the Internal Revenue Code of 1954, as amended, the CITY OF FORT WAYNE, INDIANA establishes its Deferred Compensation Plan, hereinafter referred to as the "Plan." Nothing contained in this Plan shall be deemed to constitute an employment agreement between any Participant and the Employer and nothing contained herein shall be deemed to give a Participant any right to be retained in the employ of the Employer.

II. DEFINITIONS

2.01 "Administrator" shall mean the person, if any, appointed by the CITY Committee to administer the Plan.

2.02 "Agreement" shall mean the resolution by which the Employer adopts this Plan.

2.03 "Beneficiary" shall mean the persons or entities designated by a Participant pursuant to Section 6.03.

2.04 "CITY Committee" shall mean the Committee established by the City of Fort Wayne, Indiana to oversee the plan.

2.05 "Code" shall mean the Internal Revenue Code of 1954, as amended, all rules and regulations thereunder, and any successor provisions thereto.

2.06 "Compensation" shall mean all payments made to a Public Employee by the Employer as remuneration for services rendered, including salaries and fees.

2.07 "Deferred Compensation" shall mean the amount of Compensation not yet earned which the Participant and the Employer mutually agree will be deferred.

2.08 "Employee" or "Public Employee" shall mean any employee or independent contractor (including an elected or appointed official) who performs services for and receives any type of compensation

from the Employer (or any agency, department, subdivision or instrumentality of the Employer) for whom services are rendered.

2.09 "Governing Board" shall mean the Common Council of the City of Fort Wayne, Indiana.

2.10 "Includible Compensation" shall mean, for purposes of the limitation set forth in Section 5.02, Compensation for services performed for the Employer that is currently includible in the Participant's gross income for Federal income tax purposes, determined without regard to any community property laws. Includible Compensation thus does not include Compensation excludable from the Participant's gross income under, for example, Sections 105(d), 403(b), 457, 125, 414(h) and 911 of the Code.

2.11 "Normal Retirement Age" shall mean, with respect to each participant, the later of:

(a) The age designated by the participant between

(i) the earliest age at which the Participant has the right to file for and receive benefits from the Employer's basic retirement plan without the Employer's consent and to receive immediate retirement benefits without actuarial or similar reduction because of early retirement. , and

(ii) age 70 1/2, or

(b) The age at which the Participant terminates his service with the Employer:

Provided, however, that the Participant's election to defer amounts in excess of the maximum deferral allowed by Section 5.02 but within the limited catch-up permitted by Section 5.03 shall constitute a designation of an age pursuant to subsection (a).

2.12 "Participant" shall mean any Employee who executes a Participation Agreement with the Employer assenting to the provisions of this Plan, once the Agreement has been approved by the Employer. Except for purposes of Articles V, IX, and XVI , "Participant" shall include former Participants.

2.13 "Employer" shall mean the City of Fort Wayne, Indiana.

2.14 "Participation Agreement" shall mean the agreement executed and filed by an Employee with the Employer pursuant to Section 5.01, in which the Employee elects to become a Participant in the Plan.

2.15 "Plan Year" shall mean the calender year.

2.16 "Separation of Service" shall mean the Participant's termination from service with the Employer, occurring other than by reason of death, within the meaning of Section 402(3) (4) (A) (iii) of the Code, or on account of the Participant's death or retirement.

2.17 "Total Amount Deferred" shall mean, with respect to each Participant, the sum of all Compensation deferred under the Plan, plus income thereon calculated in accordance with Section 5.08 by the method designated in the Participant's Participation Agreement(s) under which such Compensation was deferred and in any subsequent election(s) to change methods.

2.18 "Unforeseeable Emergency" shall mean severe financial hardship to a Participant resulting from a sudden and unexpected illness or accident of the Participant or of a dependent (as defined in Section 152(a) of the Code) of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The need to send a Participant's child to college or the desire to purchase a home shall not constitute Unforeseeable Emergencies. The Committee shall determine in its sole discretion whether a hardship to a Participant constitutes an Unforeseeable Emergency.

III. **ADMINISTRATION**

3.01 This Plan shall be administered by the CITY Committee, which shall represent the Employer in all matters concerning the administration of this Plan. If an administrator has been appointed pursuant to section 2.01, it shall administer the Plan on behalf of the CITY Committee, and all references herein (other than in sections 5.08 and 10.02) to the CITY Committee shall be deemed to include such Administrator.

3.02 The CITY Committee shall have full power and authority to adopt rules and regulations for the administration of the Plan, and to interpret, alter, amend, or revoke any rules and regulations so adopted.

3.03 Every action taken by the CITY Committee shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon it. The CITY Committee shall be deemed to have exercised reasonable care, diligence and prudence and to have acted impartially as to all persons interested, unless the contrary be proven by affirmative evidence. The CITY Committee shall not be liable for amounts of Compensation deferred by Participants or for other amounts payable under the Plan.

3.04 For convenience and to facilitate the orderly administration of the Plan, the CITY Committee shall maintain a deferred compensation ledger account with respect to each Employee.

IV. ADOPTION OF THE PLAN

4.01 Adoption:

(a) The Employer has adopted the CITY Deferred Compensation Plan.

V. PARTICIPATION IN THE PLAN

5.01 Enrollment in the Plan:

(a) An Employee may become a Participant by executing a Participation Agreement. Compensation will be deferred for any calendar month only if a Participation Agreement providing for such deferral is executed by the Participant and approved by the Committee or its designee before the beginning of such month.

(b) By signing the Participation Agreement, the Participant elects to participate in this Plan and consents to the deferral by the Employer of the amount specified in the Participation Agreement from the Participant's gross compensation for each pay period. The deferred amount must equal at least \$5.00 per week, \$10.00 biweekly, or \$20.00 per month.

5.02 Deferral Limitations: Except as provided in Section 5.03, the maximum that may be deferred under the Plan for any taxable year of a Participant shall not exceed the lesser of (a) \$7,500 or (b) 33 1/3% of the Participant's Includible Compensation, each reduced by any amount excludable from the Participant's gross income for that taxable year under Section 403(b) of the Code on account of Employer contributions. In the case of a person who participates in more than one deferred compensation plan governed by Section 457 of the Code, the limitations set forth in Sections 5.02 and 5.03 shall apply to all

such plans considered together.

5.03 Limited Catch-up: For one or more of the Participant's last three taxable years ending before attaining Normal Retirement Age under the Plan, the maximum deferral shall be the lesser of

a) \$15,000, reduced by any amount excludable from the Participant's gross income for that taxable year under Section 403(b) of the Code on account of Employer contributions, or

(b) the sum of

- (i) the limitations established for purposes of Section 5.02 of the Plan for such taxable year (determined without regard to this Section 5.03), plus
- (ii) so much of the limitation established under Section 5.02 for prior taxable years (beginning after December 31, 1978 and during all or any portion of which the Participant was eligible to participate in this Plan) as has not theretofore been used under Sections 5.02 or 5.03, plus
- (iii) so much of the limitation established in accordance with Treasury Regulations 1.457-2(e) (1) under an eligible state deferred compensation plan (within the meaning of Section 457 of the Code and the regulations thereunder) sponsored by an entity other than the Employer (beginning after December 31, 1978 and during all or any portion of which the Participant was eligible to participate in such other plan) as has not theretofore been used under any other plan and this Section 5.03; Provided, however, that this Section 5.03 shall not apply with respect to any Participant who has previously utilized in whole or in part the limited catch-up under this Plan or under any other eligible state deferred compensation plan (within the meaning of Section 457 of the Code and the regulations thereunder).

5.04 The Participant acknowledges the right of the CITY Committee to disallow deferral of Compensation under the Plan in excess of the limitations stated above. However, the CITY Committee shall have no liability to a Participant if the CITY Committee fails to disallow a deferral in excess of such limitations, if the Participant's Participation Agreement directed such deferral.

5.05 A Participant may modify the Participation Agreement with respect to future amounts once during each open enrollment period authorized by the CITY Committee.

5.06 A Participant may at any time revoke his agreement to defer Compensation by completing a Discontinuance & Payout Request and filing it with the Committee at least 30 days prior to the effective date of the revocation. However, his Total Amount Deferred shall be distributed only as provided in Articles VI and VII.

5.07 A Participant who has received all of his Total Amount Deferred as set forth in Article VIII or revokes his Participation Agreement as set forth in Section 5.06 ,above may again become a Participant by executing in an open enrollment period authorized by the CITY Committee a new Participation Agreement to defer Compensation not yet earned, provided that no additional amount may be deferred with respect to any Participant who revokes participation as a condition for receiving a lump sum distribution under section 6.8.

5.08 Choice of Investments: Income will be accrued on amounts deferred under the Plan in accordance with the following procedure. The CITY Committee will in its sole discretion select certain investment options to be used to determine income to be accrued on deferrals. These investment options may include: (a) a fixed rate of interest, (b) specified mutual fund shares, (c) specified equity or debt securities (for example, specified stocks and bonds) or (e) specified life insurance or annuity contracts.

Each Participant will designate on his Participation Agreement the investment that will be used to determine the income to be accrued on amounts deferred by him. If the investment chosen by the Participant experiences a gain, the Participant's benefits under the Plan likewise will reflect income for that period. If the investment chosen by a Participant experiences a loss, the Participant's benefits under the Plan, likewise will reflect loss for that period.

The CITY Committee may from time to time change the investment options under the Plan. If the CITY Committee eliminates a certain investment option, all Participants who had chosen that investment will select another option; the Participants will have no right to require the CITY Committee to select or retain any investment option. A Participant may from time to time (whether before or after payments have commenced under the Plan) change his choice of investment option. Any change with respect to investment options made by either the CITY Committee or a Participant, however, may affect only income to be accrued after that change.

The investment options made available under the Plan are used solely to measure the income to be accrued on amounts deferred. A Participant's benefits payable under the Plan shall be determined as if his deferrals had been invested in his chosen investment. Nothing in this Section 5.08 shall require the Employer actually to invest any amount in the investments chosen by the Participants, however, and if the Employer should invest in investments selected by the Participants, no Participant shall have any right, title, or interest in the assets so invested.

VI. DISTRIBUTION PROCEDURES

6.1 Upon Retirement -- Distributions to a Participant who retires upon or after attaining Normal Retirement Age shall commence on the first day of the third month following his/her retirement; provided, however, that at least 60 days prior to such commencement day, the Participant may irrevocably elect to defer the commencement of benefit payments until a fixed or determinable date subsequent to the commencement date specified in this Section 6.1. In no event shall distribution commence later than the later of (i) 60 days after the close of the Plan Year in which the Participant or former Participant attains (or would have attained) Normal Retirement Age, or (ii) 60 days after the close of the Plan Year in which the Participant separates from service with the Employer. Distribution shall be made in one lump sum or in regularly scheduled payments as specified in the Participant's Participation Agreement or as otherwise specified by the Participant in writing to the Administrator not less than 60 days prior to the commencement of payments. The amount of such lump sum or scheduled payments, unless distributed as annuity or insurance contracts, shall equal the value of the Participant's account.

6.2 Upon Death -- In the event of a Participant's death prior to the distribution of all amounts credited to his account, such remaining amounts shall be paid to the Participant's Beneficiary commencing on the first day of the third month after the Participant's death. Such distribution shall be in the form of a single lump sum payment or regularly scheduled payments, at the election of the Participant in the Joinder Agreement or (if there is no such election by the Participant) of the Beneficiary after the Participant's death but at least 60 days prior to the commencement of benefit. Each Participant may designate in his Joinder Agreement a Beneficiary or Beneficiaries to receive any amounts which may be distributed in the event of his death prior to the complete distribution of benefits. A Participant may change his designation of Beneficiaries at any time by filing a proper application with the administrator. If no such

designation is in effect on a Participant's death, or if the designated Beneficiary does not survive the Participant by 30 days, his Beneficiary shall be his estate.

6.3 Upon Disability -- In the event of a Participant's Disability, distributions shall commence as of the first day of the third month following his/her separation from service, provided, however, that at least 60 days prior to such commencement date, the Participant may irrevocably elect to defer the commencement of benefit payments until a fixed or determinable date subsequent to the commencement date specified in this Section 6.3. In no event shall distribution commence later than the latter of (i) 60 days after the close of the Plan Year in which the Participant or former Participant attains (or would have attained) Normal Retirement Age, or (iii) 60 days after the close of the Plan Year in which the Participant separates from service with the Employer. Distribution shall be made in one lump sum or in regularly scheduled payments as specified in the Participant's Participation Agreement or as otherwise specified by the Participant in writing to the Administrator not less than 60 days prior to the scheduled payments. The amount of such lump sum or scheduled payment, unless distributed as annuity or insurance contracts, shall equal the value of the Participant's account.

6.4 Upon Termination of Service -- In the event of a Participant's separation from service in circumstances other than those described in sections 6.1, 6.2 and 6.3 of this Plan, distributions shall commence on the first day of the third month following his/her separation from service, provided, however, that at least 60 days prior to such commencement date, the Participant may irrevocably elect to defer the commencement of benefit payments until a fixed or determinable date subsequent to the commencement date specified in this Section 6.4. In no event shall distribution commence later than the later of (i) 60 days after the close of the Plan Year in which the Participant or former Participant attains (or would have attained) Normal Retirement Age, or (ii) 60 days after the close of the Plan Year in which the Participant separates from service with the Employer. Distribution shall be made in one lump sum or in regularly scheduled payments as specified in the Participant's Participation Agreement or as otherwise specified by the Participant in writing to the Administrator not less than 60 days prior to the commencement of payments. The amount of such lump sum or scheduled payments, unless distributed as annuity or insurance contracts, shall equal the value of the Participant's Account.

6.5 Independent Contractor -- Notwithstanding any other provisions of this Plan, any amount payable under section 6.1, 6.3 or 6.4 of this Plan to a Participant who is or was an independent contractor shall not be paid

- (i) before a date at least 12 months after the date on which the contract expires under which services are performed for the Employer (or, in the case of more than one contract, all such contracts expire), and
- (ii) on such date if the Participant performs services for the Employer as an independent contractor or employee after the expiration of the contract(s) and before such date.

6.6 Required Beginning Date -- The entire interest of the Participant will be distributed, or commence to be distributed, not later than the April 1 following the calendar year in which the Participant attains age 70-1/2 ("required beginning date"), in equal or substantially equal amounts over (i) the life of the Participant, (ii) the lives of the Participant and his Beneficiary, (iii) a period not extending beyond the life expectancy of the Participant, (iv) a period not extending beyond the joint and last survivor expectancy of the Participant and the Beneficiary, or (v) a combination of the foregoing. If the Participant has not retired, died, been disabled or terminated service as of the required beginning date, distributions shall nonetheless commence in the form specified in section 6.1.

6.7 Limitations on Distributions -- Notwithstanding any other provision of this Plan, distributions shall be subject to the following limitations:

- (a) If distribution first commences under section 6.1, 6.3, 6.4 or 6.6, such distribution shall be made in a form under which:
 - (i) the amount distributed in each year commencing with the required beginning date must be either (A) a level amount determined by applying the Participant's entire interest to the purchase of an annuity contract commencing payments at least annually on or before the required beginning date over a period consistent with section 6.6 or (B) at least equal to the quotient obtained by dividing the Participant's then remaining interest by the life expectancy of the Participant or the joint and last survivor expectancy of the Participant and the Beneficiary, as relevant;

- (ii) if provision is made for the payment of a portion of the benefits to a Beneficiary, the amount payable to the Participant actuarially must exceed $2/3$ of the maximum amount payable to the Participant had no provision been made for payments to the Beneficiary (determined as of the commencement of the distribution); and
 - (iii) any amount not distributed to the Participant during his life will be distributed after the death of the Participant at least as being used under section 6.7(a)(ii) as of the date of his death.
- (b) If distribution first commences after the Participant's death under section 6.2, the Participant's entire interest must be distributed over a period not to exceed (i) the Beneficiary's life or life expectancy, if the Beneficiary is the Participant's surviving spouse and if distribution commences on or before the date the deceased Participant would have attained age 70 $1/2$, (ii) the lesser of 15 years or the life expectancy of the Beneficiary, if the Beneficiary is not the Participant's surviving spouse and if distributions commence within one year of the date of the Participant's death in equal or substantially equal payments, or (iii) the lesser of 5 years from the date of the Participant's death or the Beneficiary's life expectancy, if subsections (b) (i) and (b) (ii) are inapplicable. For purposes of this subsection, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving spouse if the remainder of the interest becomes payable to the surviving spouse when the child reaches the age of majority.
- (c) For purposes of section 6.6, 6.7(a) and 6.7(b), life expectancies will be computed by use of the expected return multiples in Treasury Regulations 1.72-9 or, if distribution is to be effected through a contract issued by an insurance company, by use of the mortality tables of such company. For purposes of section 6.6, 6.7(a) (i), and 6.7(b)(i), the life expectancy of the Participant and the Participant's surviving spouse (if such spouse is the Beneficiary) may be recalculated annually.
- (d) Any distribution hereunder payable over a period in excess of one year can only be made in substantially nonincreasing amounts, paid not less frequently than annually, which includes but is not limited to the methods described in section 6.7(a) (1) (A) and (B).

6.8 Upon Permanent Cessation of Future Deferrals -- Notwithstanding any other provision of this Plan, if the total amount payable to a Participant under the Plan does not exceed \$3,500 and if no further amounts may be deferred under the Plan with respect to the Participant (by reason either of separation from service or of the Participant's permanent revocation of all future deferrals hereunder in accordance with Article 5), the Participant may elect to receive his entire interest in a lump sum payable within 60 days of such election. Such election must be made (a) within 90 days of such separation from service or (b) no earlier than 12 months after such revocation, in a form specified by the Administrator. If such election is not made, the Participant's benefits shall be distributed in accordance with the preceding provisions of this Article 6 or with section 7.

VII. FORM OF DISTRIBUTIONS

7.01 Distributions of amounts under Articles VI of the Plan shall conform to the requirements of this Article VI.

(a) Subject to the requirements of this Article VI, each Participant may elect the settlement option and payment period for payments to be made with respect to each event described in Articles VI from among any alternatives offered by the CITY Committee. Such election may be made or modified until the date 30 days prior to the time that benefit payments are to commence. The settlement options and payment periods available under the Plan shall be:

- (1) A lump sum distribution;
- (2) Annual or more frequent (but not more frequently than monthly) installments as nearly equal as practicable over a definite period; and
- (3) A life annuity provided by a specified insurance company.

(b) If the Total Amount Deferred is less than \$1,750, or if a Participant has elected a settlement option for himself or his Beneficiary that requires installment or annuity payments of less than \$25 per month, determined as of the date benefit payments are to commence, then notwithstanding any election made pursuant to subsection (a), the Employer shall pay the total Amount Deferred to the Participant or his Beneficiary in a

single payment on the date payments are to commence.

- (c) Subject to the provisions of this Article VII, if a Participant does not effectively elect a settlement option and payment period for benefits payable under Section 6.01 , then such benefits shall be paid to the Participant in the form of a life and 15-year certain annuity.

If a Participant does not effectively elect a settlement option and payment period for benefits payable under Section 6.02 , then such benefits shall be paid, beginning on the first day of the third month following the Participant's death, in the following form:

- (1) Benefits payable to the Participant's surviving spouse shall be paid in the form of a life annuity;
- (2) Benefits payable to the Participant's estate shall be paid in a lump-sum distribution;
- (3) Benefits payable to any other Beneficiary shall be paid in the form of a 15-year certain annuity;

VIII. FINANCIAL HARDSHIP

Notwithstanding any other provision herein, in the event of an Unforeseeable Emergency as defined in Section 2.18 hereof, a Participant may make a request to the Committee that the Employer pay all or a portion of the Total Amount Deferred to the date of payment. If the application for payment is approved by the Committee, payment will be made within 60 days following such approval. Payment shall be limited strictly to that amount reasonably necessary to meet the situation constituting the Unforeseeable Emergency, and payments may not be made to the extent that a hardship is or may be relieved through reimbursement or compensation by insurance or otherwise, by liquidation of the Participant's assets (to the extent such liquidation does not itself cause severe financial hardship), or by cessation of deferrals under the Plan. Any remaining amounts shall be paid in accordance with Articles VI and of the Plan.

IX. LEAVE OF ABSENCE

9.01 If a Participant is on an approved leave of absence from the Employer with compensation, or on approved leave of absence without compensation for a period of not more than three months (which period may be extended by the Employer), his participation in the Plan may continue.

9.02 If a Participant is on an approved leave of absence without compensation and such leave of absence continues beyond the period specified in Section 9.01, said Participant shall have terminated employment with the Employer, provided, however, that prior to the expiration of the period specified in Section 9.01, said Participant may request the Committee to permit him to leave the funds previously deferred in the Plan. Upon termination of leave without pay and return to active status, the Participant may execute a new Participant Agreement to be effective when permitted by the Plan.

X. AMENDMENT OR TERMINATION OF PLAN

10.01 The Employer may at any time terminate its participation in this Plan. Upon such termination, each Participant in the Plan will be deemed to have revoked his agreement to defer future compensation as provided in Section 5.06 as of the date of such termination. Each Participant's full Compensation on a non-deferred basis will thereupon be restored.

10.02 The CITY Committee may also amend the provisions of this Plan (including those provisions with respect to its duties and responsibilities hereunder) at any time; provided, however, that no amendment shall affect the amount of benefits which at the time of such amendment shall have accrued for Participants or Beneficiaries, to the extent of any Compensation deferred before the time of the amendment and income thereon accrued to the date of the amendment, calculated in accordance with Section 5.08.

XI. RELATIONSHIP TO OTHER PLANS

It is intended that, pursuant to Section 457 of the Code, the amount of Deferred Compensation will not be considered current compensation for purposes of Federal income taxation. Such amounts will, however, be included as compensation to the extent required under the Federal Insurance Contributions Act (FICA). Payments under this plan will supplement retirement and death benefits payable under the Employer's group insurance and retirement plans, if any.

XII. TRANSFER IN LIEU OF BENEFITS

Upon the occurrence of any event requiring the payment of amounts under this Plan, the Committee may, in its sole discretion, elect to honor a request from the Participant to substitute the transfer in kind and assignment of any asset which the Employer has acquired, at fair market value.

XIII. NON-ASSIGNABILITY

It is agreed that neither the Participant, nor his Beneficiary, nor any other designee shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be non-assignable and non-transferable; and in the event of attempt to assign or transfer, the Employer shall have no further liability hereunder, nor shall any unpaid amounts be subject to attachment, garnishment or execution, or be transferable to operation of law in event of bankruptcy, insolvency, except to the extent otherwise required by law.

XIV. ASSETS

All amounts of Compensation deferred under the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights, shall remain (until made available to the Participant or his Beneficiary) solely the property and rights of the Employer and shall be subject only to the claim of general creditors of the Employer.

XV. PARTICIPATION BY CITY COMMITTEE MEMBERS

Members of the CITY Committee who are otherwise eligible may participate in the Plan under the same terms and conditions as apply to other Participants but each member shall not have the power to participate in any CITY Committee action taken with respect to his participation.

XVI. EMPLOYER PARTICIPATION

Notwithstanding any other provisions of this Plan, the Employer may add to the amounts payable to any Participant under the Plan additional Deferred Compensation for services to be rendered by the Participant to the Employer during a calendar month, provided:

- (a) The Participant has elected to have such additional Compensation deferred, invested, and distributed pursuant to this Plan, prior to the calendar month in which the Compensation is earned, and
- (b) Such additional Compensation deferred, when added to all other Compensation deferred under the Plan, does not exceed the maximum deferral permitted by Article V.

XVII. DISCLAIMER WITH RESPECT TO INVESTMENTS

The Employer, the CITY Committee, the Governing Board and the Administrator, if one has been appointed, make no endorsement, guarantee or any other representation and shall not be liable to the Plan or to any Participant, Beneficiary, or any other person with respect to the financial soundness, investment performance, fitness, or suitability (for meeting a Participant's objectives, future obligations under the Plan, or any other purpose) of (a) any investment vehicle offered as a standard for measuring income on amounts deferred under the Plan under Section 5.08, or (b) any investment vehicle in which amounts deferred under the Plan are actually invested.

XVIII. PLAN-TO PLAN TRANSFERS

18.01 Transfers to the Plan: If a Participant was formerly a participant in an eligible state deferred compensation plan (within the meaning of Section 457 of the Code and the regulations thereunder) and if such plan permits the direct transfer of the Participant's interest therein to the Plan, then the Plan shall accept assets representing the value of such interest; provided, however, that the Administrator may require in his sole discretion that some or all of such interest be transferred in cash or its equivalent. Such amount shall be held, accounted for, administered and otherwise treated in the same manner as Compensation deferred by the Participant under the Plan (including, without limitation, for purposes of Section 5.01) except that

- (a) only the amount, if any, transferred to this Plan which was deferred under the transferror plan in the taxable year when transfer occurs shall be treated as Compensation deferred under the Plan in such year for purposes of sections 5.01 and 5.02 and 5.03 and
- (b) such amount shall remain subject to, and shall be administered in accordance with, any irrevocable elections made under the transferror plan with respect to such amount.

18.02 Transfers from the Plan: The amounts credited to the account of a former Participant in the Plan may be transferred to another eligible state deferred compensation plan (within the meaning of Section 457 of the Code and the regulations thereunder) and in which the former Participant currently participates, and if such plan provides for the acceptance of such amounts; provided, however, that if a Participant terminates his service with the Employer in order to accept employment with the entity sponsoring such plan and if such plan accepts transferred amounts, then payment of benefits under the Plan will not commence, regardless of any other provision of this Plan, and the deferrals will automatically be transferred to such plan.

18.03 Application for Transfer: If the conditions in Section 18 are met and the Participant wishes to transfer his/her account, he/she shall complete any application form and/or other documents as may be required by the Administrator.

18.04 Administrative Rules: The CITY Committee shall prescribe such rules consistent with the provisions of Sections 18.01 and 18.02 concerning plan-to-plan transfers as in its sole judgment deems desirable for the orderly administration of the Plan.

XIX. INTERPRETATION

19.01 This Plan shall be construed under the laws of the State of Indiana.

19.02 This Plan is intended to be an eligible state deferred compensation plan within the meaning of Section 457 of the Code, and shall be interpreted so as to be consistent with such Section and all regulations promulgated thereunder.

19.03 Word Usage: Words used herein in the singular shall include the plural and the plural the singular where applicable, and one gender shall include the other genders where appropriate.

19.04 Headings: The headings of articles, sections or other subdivisions hereof are included solely for convenience of reference, and if there is any conflict between such headings and the text of the Plan, the text shall control.

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19.05 Counterparts: This instrument may be executed in several counterparts, each of which shall be deemed an original and said counterparts shall constitute but one and the same instrument, which may be sufficiently evidenced by the counterparts.

PASSED AND ADOPTED this day of , 19 .

City of Fort Wayne , Indiana

Mayor

ATTEST:

**JOINDER AGREEMENT
APPLICATION TO PARTICIPATE IN THE
CITY OF FORT WAYNE
DEFERRED COMPENSATION PLAN**

1. New Enrollee ☐ Re-Enrollment ☐ Continuing Enrollee ☐ ☐ Investment Change
☐ Increased By \$
☐ Decreased By \$
2. S/S No. _____ Dept. Name _____ Dept. No. _____ Payroll Div. _____
3. Name _____
Last First M.I.
4. Amount to be deferred per pay period \$ _____, not less than \$10 (this includes an Administrative Fee of _____).
5. Effective Date _____/_____/_____
6. Sex _____ 7. D.O.B. _____/_____/_____
8. TO: Deferred Compensation Advisory Committee

Beginning with the effective date shown above, I wish to participate in the CITY OF FORT WAYNE Deferred Compensation Plan and hereby agree to forego my right to receive Compensation to the extent of the amount shown equal to \$ _____ per year in return for the benefits specified in the Plan and this Participation Agreement.

My benefits are to be determined as if that amount had been invested as follows:

Office Use Only				
% Split	\$	Amount	Investment Vehicle Selection	Account Code
		with		[]
		with		[]
		with		[]
		with		[]
		with		[]
		with		[]
100%	\$		Totals	

9. I wish to designate the following beneficiary (beneficiaries) in accordance with the provisions of the Plan:

PRIMARY Name _____ Relationship _____
Address _____

CONTINGENT Name _____ Relationship _____
Address _____

10. Distribution

1. Retirement

- A. Lump Sum _____
Initials _____
- B. Installments _____
Months Initials _____
- C. Annuity _____ yrs. certain _____
Initials _____

3. Termination of Employment

- A. Lump Sum _____
Initials _____
- B. Installments _____
Months Initials _____

2. Disability

- A. Lump Sum _____
Initials _____
- B. Installments _____
Months Initials _____
- C. Annuity _____ yrs. certain _____
Initials _____

4. Death

- A. Lump Sum _____
Initials _____
- B. Installments _____
Months Initials _____
- C. Annuity _____ yrs. certain _____
Initials _____
- D. Beneficiary Right to Choose _____
Initials _____

11. Term of Agreement

This agreement shall remain in effect until participants' termination of employment, retirement, disability or death, or upon written amendment or revocation.

I acknowledge receipt of a copy of the Deferred Compensation Plan and Confirm that I have reviewed and understand all of the terms, provisions and conditions thereof, which terms, provisions and conditions are hereby incorporated into this Agreement, and if accepted into the Plan, I authorize Payroll to deduct the amount set forth in line 4, each payroll period.

Representative _____ Signed _____ Date _____

Code No. _____ Address _____

Accepted by _____

Date _____ Residence Phone No. () _____

By _____ Business Phone No. () _____

DIGEST SHEET

TITLE OF ORDINANCE Employee Deferred Compensation Plan *Q-88-08-05*

DEPARTMENT REQUESTING ORDINANCE Personnel

SYNOPSIS OF ORDINANCE A Resolution of the Common Council of the City of Fort

Wayne, Indiana authorizing the adoption and implementation of an Employee

Deferred Compensation Plan.

EFFECT OF PASSAGE To secure retirement plan and assure reasonable security to

employees by being able to attract competent personnel and by increasing flexibility.

EFFECT OF NON-PASSAGE Inability to acquire retirement security under existing

retirement plans.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) _____

ASSIGNED TO COMMITTEE (PRESIDENT) _____

BILL NO. R-88-08-05

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS

REFERRED AN (ORDINANCE) ~~(RESOLUTION)~~ of the Common
Council of the City of Fort Wayne, Indiana, authorizing
the adoption and implementation of an Employee Deferred
Compensation Plan

HAVE HAD SAID (ORDINANCE) ~~(RESOLUTION)~~ UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) ~~(RESOLUTION)~~

YES

NO

Donald J. Schmidt
ABSTAIN

DONALD J. SCHMIDT
CHAIRMAN

Samuel J. Talarico

CHARLES B. REDD
VICE CHAIRMAN

ABSTAIN

Janet G. Bradbury

SAMUEL J. TALARICO

JAMES S. STIER

JANET G. BRADBURY

CONCURRED IN 8-23-88

Sandra E. Kennedy
Sandra E. Kennedy
City Clerk